

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
RESPONSES TO PUBLIC COMMENTS CONCERNING AN AGENCY-
INITIATED MODIFICATION TO INCLUDE CORRECTIVE ACTION
REQUIREMENTS FOR LANDFILL 1 (SWMU 6-1, LF-001), LANDFILL 2
(SWMU 6-2, LF-002), AND LANDFILLS 4, 5, AND 6 (SWMU 6-4, LF-008) TO
THE KIRTLAND AIR FORCE BASE HAZARDOUS WASTE FACILITY
PERMIT, EPA ID# NMD9570024423, PUBLIC NOTICE NO. 04-02
June 3, 2004**

Comments and a request for public hearing were received from Citizens Against Radioactive Dumping (CARD) and the Highland Sr. Citizen Panthers (HSCP), on March 1, 2004. Comments were also received from Kirtland Air Force Base (KAFB) on February 17, 2004.

Public comments are documented below in bold font, followed by the New Mexico Environment Department's (NMED's) responses in normal font. Comments are numbered to facilitate the NMED's responses.

Comments/Hearing Request from CARD and HSCP

1. The reason a hearing is generally set is because there is feedback and further comment (not allowed in a comment paper.) Since some of the information regarding the KAFB landfills is not conclusive, CARD would like to be informed continually as to the progress in digging up and covering this waste.

CARD and the HSCP will be added to the NMED's mailing list to receive notices related to the KAFB hazardous waste facility permit (RCRA Permit).

The NMED will also direct KAFB to add CARD and the HSCP to their mailing list for public notices.

Permit Modification: none

2. Also, we need to know the exact nature of why modifications from NMED landfill regulation are necessary.

KAFB's RCRA Permit will be modified, not the New Mexico Hazardous Waste Management Regulations. The primary reasons that the KAFB RCRA Permit will be modified are to make the remedy for the landfills enforceable, and to provide the basic technical/regulatory framework and schedules by which corrective action will be completed.

No changes to the Permit Modification warranted.

3. Also-since weapons manufacture and testing connects Sandia and KAFB, it is necessary for the public to be aware of new dangers to exposure of radioactive materials in waste disposal of experimental items now and in the future.

The three landfills that are the subject of the corrective measures study and the proposed permitting action are not active. Any new waste that may be generated currently or in the future will not be disposed of in these landfills and is not relevant to this permit modification.

No changes to the Permit Modification warranted.

4. While landfills use Beta and Gamma testing of materials for old waste in landfills 1, 2, 4, 5, and 6, and test further in the laboratories, what new tests are necessary is not addressed in the Permit Modifications for monitoring of new military techniques tested by KAFB. While the public doesn't need to know the nature of these new devices, permits or disposal of testing materials should address generally the waste disposal methods and safety precautions used to insure prevention of contamination.

See response to comment #3 above.

No changes to the Permit Modification warranted.

5. The old landfills have been scientifically analyzed for disease occurrences around these landfills and there is a correlation in all cases for a higher occurrence of leukemia and thyroid conditions within a 10-mile radius of the facilities. If there is to be more waste, a map of the disposal areas needs to be made public.

The NMED is not aware of any studies linking any of the three KAFB landfills, which are the subject of this permit modification, to higher occurrences of leukemia or abnormal thyroid conditions. No groundwater releases have been detected from the three landfills. See also response to comment #3 above.

No changes to the Permit Modification warranted.

6. I have a publication: DOE-EIS-236-S2 about "Stockpile Stewardship and Management for a Modern Pit Facility". Any new permit regulations and modifications need to address themselves to this set (issued May, 2003). The fact that we are now addressing 1951-1975 waste pits made by Sandia and KAFB shows the necessity for addressing such issues as city and population growth, water problems and erosion of land and the extinction of existing plant populations (which hold down the soil) in addressing regulations on permits for Hazardous Waste Disposal on KAFB in a futuristic, imaginative method. (One example of inadequate

planning is the widening of roads in Albuquerque, which never keeps up with increased travel).

As mentioned previously, the New Mexico Hazardous Waste Management Regulations are not being modified. Urban planning issues are outside of the scope of this permit modification.

The DOE guidance document referred to in the comment is not relevant to the proposed action. Permit modifications (such as this) must meet the requirements of the New Mexico Hazardous Waste Act and the New Mexico Hazardous Waste Management Regulations. See comment #3.

7. While Sandia Base calls these pits “Mixed Waste”, KAFB does not address these facilities as such, although they seem to be adjacent on the maps. A clear and concise configuration of both sites, carefully marked as to the # of cu. yds. involved would be extremely helpful, yet these are not present in any of the publications involved. How can the public address the issues of permits without knowing the FACTS?

The Fact Sheet issued by the NMED contains short summaries for each of the three landfills, including information as to general location, history, site characterization, and the results of the Corrective Measures Study. The Fact Sheet also describes how to view and if desired, how to obtain copies of the administrative record, which includes detailed reports concerning the characterization of the landfills and the Corrective Measures Study. Also, you may view the administrative record by contacting the NMED Hazardous Waste Bureau and scheduling a time.

8. The only comment is that landfill 1 on the west side of KAFB has 603,000 cubic yards. Just how close this is to the endangered Burrowing Owls or the nests of other birds that migrate is indeterminable. Also, the amount of precaution for these and other species is not addressed.

KAFB personnel indicate that there is a burrowing owl nest just beyond the southeast corner of the KAFB active landfill. The nest is approximately 1500 feet from Landfill 8. There are no burrowing owl nests in the area of Landfill 1 or Landfill 2.

There is a Great Horned Owl nest located at the Trestle Facility within the substructure about 80 feet above the ground. This nest is approximately 700 feet from Landfill 2.

The Grey Vireo, a state Endangered Species, has over 50 territories/nesting areas at KAFB. Their habitat is the juniper/piñon woodland ecosystem, which is located in the canyon/mountain area of the withdrawn area. This area is located approximately 5 miles from the landfills that KAFB wishes to cap.

Permit Modification: Landfill 8 is adjacent to the active KAFB landfill, thus a cover system has already been constructed at risk by the facility. Paragraph C.3.g will be added to the final permit to require protection of nesting birds:

- g.) Prior to implementing the remedy for Landfills 1 and 2, and prior to conducting any further construction/maintenance work at Landfill 8, the Permittee will conduct a survey of the landfill footprints and immediate adjacent areas and identify threatened & endangered species, species of concern, and migratory birds that would be affected by the cover installation projects. KAFB shall consult and/or confer with the U.S. Fish and Wildlife Service to determine if relocation or other mitigating measures are necessary. Any such identified measures will be implemented prior to the beginning of any construction activities.

9. Another concern is the sampling methods used. Since these areas are not altogether identified, no provision has been made for new discovery of toxic materials. Only the old ones, such as arsenic, benzene, chromium, lead and xylene that has been discovered has been addressed. What provision is given in the permits (especially for Landfill 6) for discovery of items not yet discovered to be added to the items now found?

As indicated in the administrative record, KAFB has sampled soil, soil vapor, and ground water at each of the three landfills for a wide range of potential contaminants. Future groundwater monitoring requirements will be determined under section C.3.f. of the permit. The NMED has the authority to require further corrective action for any Solid Waste Management Unit (including the three subject landfills) if new information suggests that conditions are no longer protective of human health or the environment.

10. Also, the proposed corrective measures at these landfills are evapotranspiration covers. Is there a suggestion for further modification if these covers prove to be inadequate for their purpose? Possible occurrences such as invasion by various organisms which spread toxicity or erosion by weathering which causes the waste to drift are not addressed in the Permit Modifications.

The permit modification includes language that requires KAFB to take additional corrective action should the remedy (evapotranspiration caps) fail (see C.3.f of the draft and final permits).

11. A further citizen concern is about the costs of these operations. Sandia Base cost lists are out of proportion to the actual cost, but that is a private, if subsidized operation.

Estimated costs are included in the Corrective Measures Study that was completed for the three landfills. NMED cannot dictate the cost to conduct the remedy at these landfills.

12. The public has a right to know and understand the costs involved in a military operation, especially of the NM Legislature uses part of the funds for its own uses in case of fines. If KAFB follows the trends of Sandia Corporation and Los Alamos and the fines are (as in the case of Los Alamos) in the 2.5 million bracket, it is the public right to know. Actually, since our senators have prevented the closing of NM Air Force bases in the past, collection of those fines could have a considerable impact on our state's economy.

The costs associated with military operations are outside the scope of KAFB's hazardous waste permit and are not relevant to the permit modification. The NMED has no authority over such costs or operations. Monies paid for fines assessed by the NMED are required by State law to be deposited into the Hazardous Waste Emergency Fund which funds specific activities defined in the New Mexico Hazardous Waste Act, Section 74-4-8, NMSA 1978.

13. The brochure and information pamphlets does not give a clear picture of many items, such as costs, environmental impact statements, future development or safety of workers involved in these activities. We have a greater need to know than is expressed in the permits, the brochures, and plans. The permits should also be more inclusive than they are.

See responses to comment #6, 7, 9 and 11 above.

14. Additional concerns may come up that we have not addressed in this request for a hearing. The mechanism for free and open discussion is thwarted when everything is required to be stated in the request for a hearing. As stated above, a hearing is not just a record of comments. It is a give and take, designed to address the basic issues involved; and, by its very nature, precludes all inclusiveness. It should not be run as a court case.

The Fact Sheet includes procedures for requesting a hearing and defining the nature of the hearing in accordance with 20.4.1.901(D)(2)(e)(ii) NMAC. The Hazardous Waste Management Regulations also specify certain formal procedures for hearings at 20.4.1.901 NMAC.

Comments from KAFB

15. (Page 8a, C.3.c.8) -- Request NMED clarification on this item. At this time, no monitoring of performance testing of the installed soil cover system is planned for the landfills. Recommend that Item 8 be deleted.

KAFB's comment proposes that the following permit language be deleted:

“8. A plan for monitoring the performance of the remedy, including sampling and laboratory analysis of all affected media;”

Permit Modification: The NMED agrees with the comment and has deleted Item #8 from the final permit. The performance of a landfill cover does not need to be monitored during construction. After construction, the performance of the three covers will be monitored as part of the controls to be implemented for long-term monitoring and maintenance (see C.3.f of the draft and final permits).

16. (Page 8a, C.3.c.9) – No Waste Management Plan will be developed for the CMI effort since no landfill wastes will be handled. A statement will be added to the work plan regarding disposition of waste, if encountered during construction activities. Recommend Item 9 be deleted.

KAFB's comment proposes that the following permit language be deleted:

"9. A waste management plan;"

Permit Modification: The NMED agrees with the comment and has deleted Item #9 from the final permit. Landfill waste will not be managed as a result of installing the cover systems. Items 10-12 of the draft permit will be renumbered to Items 8-10 in the final permit.

17. (Page 8a, C.3.c.10) – A quarterly report will be generated providing the requested information. Recommend replacing "periodic" with "quarterly".

KAFB's comment proposes that the permit language be revised to:

"8. A proposed schedule for submission to the Administrative Authority of quarterly progress reports;"

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change, which provides specifically for the progress reports to be submitted quarterly.

18. (Page 8b, C.3.e) – A quarterly report will be generated providing the requested information. Recommend adding "quarterly" before "...progress reports will". Also, recommend adding "groundwater" prior to "monitoring" in item 5 and adding, "(Does not include geotechnical data)" prior to "during the reporting...". No waste disposal will take place during construction activities, therefore recommend deleting Item 6.

A. KAFB proposes that C.3.e be revised to:

“For each landfill, the Permittee shall submit to the Administrative Authority quarterly progress reports during implementation of the remedy...”.

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change, which provides specifically for the progress reports to be submitted quarterly.

B. KAFB also proposes that C.3.e.4 to be revised to:

“A discussion of the work projected for the next reporting period, including all sampling events; and”

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change to add the word “and”, which clarifies that all information in C.3.e.1-6 must be submitted to the NMED.

C. KAFB also proposes C.3.e.5 to be revised to:

“Copies of the results of all groundwater monitoring data, including sampling and analysis, and other data generated (does not include geotechnical data) during the reporting period; and”

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change. At the time the landfill covers will be installed, ground water is the only media for which monitoring is planned. Although geotechnical data will also be acquired by KAFB during cover construction, such data is to be summarized in the Corrective Measures Implementation Report at the completion of construction activities.

D. KAFB also proposes the following language to be deleted (C.3.e.6):

“Copies of all waste disposal records generated during the reporting period.

Permit Modification: The NMED agrees with the comment and has deleted C.3.e.6 from the final permit. Landfill waste will not be managed as a result of installing the cover systems.

E. KAFB further proposes the following language to be deleted (C.3.d.5):

“Copies of all waste disposal records, if not already submitted in a progress report”.

Permit Modification: The NMED agrees with the comment and has deleted C.3.d.5 from the final permit. Landfill waste will not be managed as a result of installing the cover systems. Item 6 will be renumbered to Item 5.

19. (Page 8b, C.3.f) – Clarification is required from NMED on the last sentence of the paragraph regarding failure of the corrective measure to be protective of human health and the environment.

KAFB proposes to add the following sentence to the end of the paragraph:

“The plans will include the process to be followed by the Permittee when and how to notify the Administrative Authority in the event the implemented corrective measure fails to meet the corrective action objectives”.

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change that clarifies that the remedy is considered a failure if the objectives of the Corrective Measures Study are not met. The new language also clarifies that the process for notifying the NMED of any such failures will be established in the long-term monitoring and maintenance plans for the landfills.

20. (Page 8c, D.2) – recommend adding “or overnight courier (i.e., Federal Express)” prior to “or hand delivered...”.

KAFB proposes to revise the last sentence of D.2 to:

“Three (3) copies of these plans, reports, notifications, or other submissions shall be submitted to the Administrative Authority and sent by Certified Mail, overnight courier (i.e., Federal Express) or hand delivery to:”

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change. The change allows for other methods beyond U.S. Postal Service certified mail to document delivery of submittals.

21. (Page 8c, D.3) – Recommend deleting the word “any” at the end of the paragraph if it was intended that this should not be included in the final permit language.

The word “Any” begins the sentence that continues on page 9. KAFB recommends inserting the phrase “(go to top of page 9)” after the word “Any”.

Permit Modification: The NMED agrees with the comment and has revised the final permit to incorporate the change. The phrase “go to top of page 9” will help direct a reader of the KAFB permit to the next page to complete the sentence which starts on the bottom of page 8c with the word “Any”.